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January 21, 2004

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David M. Konschnik
Director
Office of Proceedings
Surface Transportation Board
1925 K Street, N.W. Room 711
Washington, D.C. 20423

Re: STB Docket No. 42057, *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*

Dear Mr. Konschnik:

The undersigned counsel for complainant in the above referenced case has received a copy of a letter from BNSF's counsel to you dated January 14, 2003. The letter represents that BNSF is providing to the Board a laptop computer containing the identical computer files BNSF provided to complainant for its use in reviewing BNSF's reply evidence. The "RTC model" referred to in the letter is the computer program BNSF used to develop its alternative to Xcel Energy's stand-alone railroad operating plan. While BNSF indicated in its reply evidence that it would supply this information to the Board in this fashion, the letter provides no explanation of why BNSF waited until over four months after final briefs were filed in this case and the record was closed to take this action. Given the passage of time that has transpired, the Board should require that BNSF certify to the Board that this information is indeed identical to what is already before the Board in this case and that the laptop contains no new evidence or argument. Moreover, should the Board discover any discrepancies between the information provided in the laptop and what is in BNSF's prior evidentiary submissions, such information should be stricken from the record of this proceeding.

BNSF has also offered, for the first time in this proceeding, "to provide an introduction or tutorial in the use of the RTC model, if the Board staff would find such an informational session to be useful." While the timing of BNSF's offer is also questionable, Xcel Energy does not object to such an informational session being held, provided that counsel for Xcel Energy and any appropriate technical experts retained by complainant are present for any and all discussions between BNSF and Board staff, and that sufficient advance notice of any such sessions is provided to enable complainant to adequately prepare. Moreover, fundamental fairness requires that, if the Board's staff takes BNSF up on its offer, a similar informational session should be held with Board staff, under the same conditions, in regards to the computer model used by Xcel Energy to test the parameters of its stand-alone railroad operating plan.

Please do not hesitate to call if you have any questions.

Sincerely,

Thomas W. Wilcox

Thomas W. Wilcox

cc: Counsel for Defendant

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